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In re Application of
David W. Leung et al.
Application No. 08/842,827
Filed: April 17, 1997
Attorney Docket No. 077319/0125

ON PETITION

This is a decision on the petition filed April 3, 2006, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513, or in the alternative, to revive the above identified application, under 37 CFR 1.137(b)¹.

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED** as involving moot issues.

The above-referenced application was held abandoned on March 1, 2006 for failure to timely pay the issue fee in response to the Notice of Allowance mailed November 29, 2005. Accordingly, a Notice of Abandonment was mailed March 28, 2006.

The file record discloses that the Notice of Allowance was mailed on November 29, 2005 to the address of record. However, petitioner contends that it was not received until March 6, 2006. In support, petitioner indicates with a statement from their docketing specialist, that a search of the docket records revealed that the office communication was not received until March 6, 2006. Petitioner submits a copy of the docket report that covers November 29, 2005 through March 6, 2006, wherein receipt of the office communication would have been entered, had it been timely received, to

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

substantiate the claim. The statement and attachments corroborate that the Notice of Allowance was not received until March 6, 2006, although the address of record was prominently displayed and properly addressed.

Since it can't be discerned why the office communication was not promptly delivered until after the due date for payment of the issue fee, and in view of the facts set forth in the petition, it is concluded that the Notice of Allowance was not timely received. Accordingly, the holding of abandonment is withdrawn.

In view of the above, no petition fees are due. As well, there is no need to treat the petition under 37 CFR 1.137(b). The petition fee in the amount of \$750 pursuant to 37 CFR 1.17(l) will be credited back to deposit account no. 19-0741.

All other requirements under 37 CFR 1.137(b) having been met, this matter is being referred to the Publishing Division to be processed into a patent.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions